

FILED BY CLERK

FEB 19 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

SERGIO DANIEL VERA,

Appellant.

)  
)  
) 2 CA-CR 2009-0140  
) DEPARTMENT A

) MEMORANDUM DECISION  
) Not for Publication  
) Rule 111, Rules of  
) the Supreme Court  
)  
)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20081562

Honorable Howard Fell, Judge Pro Tempore

AFFIRMED IN PART; VACATED IN PART AND REMANDED

Emily Danies

Tucson  
Attorney for Appellant

ESPINOSA, Presiding Judge.

¶1 Appellant Sergio Vera was charged with second-degree burglary, theft by control of property having a value of \$2,000 or more but less than \$3,000, and criminal damage. A jury found him guilty of the charges, although it reduced the value of the property involved in the criminal damage charge. The trial court suspended the

imposition of sentence and placed Vera on probation for three years. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). She has found no arguable issue to raise and requests that we search the record for fundamental error.

¶2 We have examined the record and find no fundamental, reversible error. The evidence against Vera was overwhelming. The testimony presented by the state included that of a codefendant who admitted that, using a truck belonging to his mother, he had driven Vera and another codefendant to a house from which they had taken certain items. Police stopped them about five minutes later and found items taken in the burglary. The victim valued the items stolen at about \$2,500 and stated it had cost \$1,100 to repair the door to the house, which the burglars had kicked in. And, Vera's fingerprints were found on one of the items. This and other evidence sufficiently established Vera's guilt of the charged offenses. Additionally, the probationary terms were well within the court's discretion to impose.

¶3 Counsel has noted that the sentencing order incorrectly states Vera was convicted after waiving his right to a jury trial. The court made the same statement during sentencing but counsel corrected the court, noting Vera was found guilty after a jury trial. The sentencing order must therefore be amended to reflect this correction. We note, too, that the trial court did not include the criminal damage conviction in the sentencing order but did cite it at the sentencing hearing when it imposed what appear to

have been concurrent, three-year terms of probation on all offenses.<sup>1</sup> Because we can infer the court intended to impose sentence on all three charges and we resolve any discrepancy between the oral pronouncement and the minute entry in favor of the former, *see State v. Hanson*, 138 Ariz. 296, 304-05, 674 P.2d 850, 858-59 (App. 1983), we vacate the sentencing order and remand this matter to the trial court with directions to correct the order to conform to this decision and the proceedings below. The convictions and terms of probation are otherwise affirmed.

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge.

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<sup>1</sup>We assume the probationary terms are concurrent, *see State v. Pakula*, 113 Ariz. 122, 124, 547 P.2d 476, 478 (1976), and were intended for all three charges.